

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

LEN DAVIS,)	
)	
Petitioner,)	
)	
v.)	No. 2:25-cv-00002-JRS-MJD
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

Order Granting Request for Counsel and Directing Briefing

Petitioner Len Davis was convicted of murder and sentenced to death. *See United States v. Davis*, 971 F.3d 524, 527 (5th Cir. 2020).

On December 23, 2024, President Biden commuted the sentences of 37 individuals on death row, including Mr. Davis. *See* The White House, "Fact Sheet: President Biden Commutes the Sentences of 37 Individuals on Death Row," <https://www.whitehouse.gov/briefing-room/statements-releases/2024/12/23/fact-sheet-president-biden-commutes-the-sentences-of-37-individuals-on-death-row/> (last visited Jan. 7, 2025); *see also* Federal Bureau of Prisons, "Find an inmate," <https://www.bop.gov/inmateloc/> (search for Len Davis reflecting he is now sentenced to "LIFE") (last visited Jan. 7, 2025).

Mr. Davis has filed a pro se "Emergency Motion for Injunctive Relief from Commutation Order by American President Joe Biden, Reversing Prisoner Len Davis Death Sentence to Life in Prison, and Request to Have Co-Counsel Appointed to Assist Prisoner Len Davis in This Matter." Dkt. 1. Because Mr. Davis is

challenging his sentence, the motion was docketed as a petition for writ of habeas corpus. Dkt. 1; *see Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973).

In the motion, Mr. Davis requests that the Court block the commutation order. Dkt. 1 at 4. Mr. Davis states that he has always maintained his innocence and believe the court has no jurisdiction to try him for civil rights offenses. *Id.* at 2. Mr. Davis states that he "did not request any commutation nor does he accept any commutation." *Id.* at 3. He requests the appointment of counsel to assist him with litigating this motion. *Id.* at 4.

A petitioner pursuing federal habeas relief is entitled to counsel only when he is under a death sentence, *see* 18 U.S.C. § 3599(a)(2); *McFarland v. Scott*, 512 U.S. 849, 855 (1994), or when an evidentiary hearing is necessary to resolve the petition. Rule 8(c), *Rules Governing Section 2255 Cases*. Here, Mr. Davis is no longer under a death sentence. Therefore, whether to appoint counsel is purely a discretionary matter. *See Winsett v. Washington*, 130 F.3d 269, 281 (7th Cir. 1997); *Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007). Thus, the Court must consider "if, given the difficulty of the case and the litigant's ability, [the petitioner] could not obtain justice without an attorney, he could not obtain a lawyer on his own, and he would have had a reasonable chance of winning with a lawyer at his side." *Winsett*, 130 F.3d at 281.

The Court harbors serious doubt that it has any power to block a commutation. *See Biddle v. Perovich*, 274 U.S. 480 (1927) (holding that the

President has the power under Article 2, Section 2 of the Constitution to commute a sentence from death to life imprisonment without the inmate's consent).

Still, given the novelty of the legal question, the Court prefers to receive counseled briefing on the motion. Accordingly, the United States is **notified** of the filing of the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241/emergency motion for preliminary injunction. A copy of the petition/motion, dkt. 1, and this Order shall be **distributed to** the United States Attorney, who shall appear by **January 10, 2025**. Mr. Davis' request for counsel is **granted** to the limited extent that the Court will appoint the Indiana Federal Community Defenders Office, Inc. ("IFCD") to represent Petitioner for the limited purpose of filing a reply. The IFCD shall have through **January 10, 2025**, to appear. Should the IFCD be unable to represent Petitioner, substitute Criminal Justice Act counsel may appear pursuant to 18 U.S.C. § 3006A(a)(2)(B).

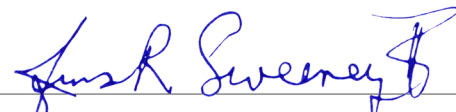
The **clerk is directed** to send a courtesy copy of this Order via email to Assistant U.S. Attorney Jeffrey Preston and First Assistant Federal Defender Sara Varner.

The briefing schedule shall be as follows:

- Response to Motion: January 13, 2025;
- Reply: January 16, 2025.

IT IS SO ORDERED.

Date: 1/7/2025



JAMES R. SWEENEY II, JUDGE
United States District Court
Southern District of Indiana

Distribution:

LEN DAVIS
24325034
TERRE HAUTE - USP
TERRE HAUTE U.S. PENITENTIARY
Inmate Mail/Parcels
P.O. BOX 33
TERRE HAUTE, IN 47808

Office of the United States Attorney
Attn: Jeffrey D. Preston, Joi Kamper
jeffrey.preston@usdoj.gov
joi.kamper@usdoj.gov
UNITED STATES ATTORNEY'S OFFICE (Indianapolis)
10 W. Market St., #2100
Indianapolis, IN 46204

INDIANA FEDERAL COMMUNITY DEFENDERS
Attn: Sara Varner
111 Monument Circle
Suite 3200
Indianapolis, IN 46204
Sara.varner@fd.org